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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,290	02/18/2004	Ernest Dean Spencer	0103072-0519315	3349
26874	7590	11/18/2005	EXAMINER	
FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202			CHEN, JOSE V	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/781,290	Applicant(s) SPENCER ET AL.	
	Examiner José V. Chen	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/18/04</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if applicant intended to claim a combination including a shelf and uprights since a shelf is claimed with specific interconnection with an upright (claim 2) such upright not being positively claimed making the metes and bounds of the claims unclear and confusing to a potential infringer. Clarification and correction are required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7, 12-18, 19, so far as definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thornley et al in view of Krag. The patent to Thornley et al teaches structure substantially as claimed including a top surface and a bottom surface, the top surface being generally rectangular and generally planar and having a front side, a back side, a left side and a right side, the said top surface being formed from a unitary sheet of metal, a front lip extending downward from the front side of the top surface, the front lip being integrally connected to the top surface and formed from the unitary sheet of metal, a back lip extending downward from the back side of the top surface, the back lip being integrally connected to the top surface and formed from the unitary sheet of metal, a left lip extending downward from the left side of the top surface, the left lip being integrally connected to the top surface and formed from the unitary sheet of metal, the left lip comprising two or more pairs of openings (fig. 2) dimensioned to receive mounting members, each opening in a pair being aligned vertically and a right lip extending downward from the right side of the top surface, the right lip being integrally connected to the top surface and formed from the unitary sheet of metal, the right lip comprising two or more pairs of openings dimensioned to receive mounting members, each opening in a pair being aligned vertically, the only difference being that the openings do not receive upwardly extending tabs. However, the patent to Krag teaches the use of providing upwardly extending tabs to adjustably position shelving. It would have been obvious at the time of the invention to modify the structure of Thornley

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to include a upwardly extending tabs to adjustably position the shelving, as taught by Krag since such structures are conventional alternative structures used in the same intended purpose thereby providing structure as claimed. The dimensions, thickness of the shelving are matters of desirability of how strong and stiff such structure is needed which would have been obvious and well within the level of ordinary skill in the art.

Claims 8, 20, so far as definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thornley et al in view of Krag as applied to the claims above, and further in view of Kline. The patent to Thornley et al in view of Krag teaches structure substantially as claimed as discussed above including shelving structure, the only difference being that there is not a reinforcing member to strengthen the shelving. However, the patent to Kline(at 80) teaches the use of providing a strengthening member to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Thornley et al to include a strengthening member, as taught by Kline since such structure is used in the same intended purpose, thereby providing structure as claimed.

Conclusion

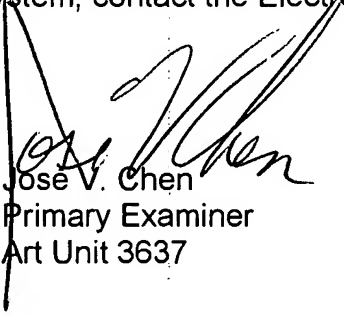
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Carlson, Ferdinand et al, Vargo, Anderson, Winqvist, Benayon, Isaac teach structure similar to applicant's.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f, m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jose V. Chen
Primary Examiner
Art Unit 3637

Chen/jvc
11-14-05